

Regulatory Analysis Form

(Completed by Promulgating Agency)

***INDEPENDENT REGULATORY
REVIEW COMMISSION***

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Pennsylvania Gaming Control Board

(2) Agency Number: 125

Identification Number: 240

IRRC Number: **3340**

(3) PA Code Cite: 58 Pa.Code §§ 461a and 469a

(4) Short Title:

Private Testing and Certification Facilities

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
☒ Final Regulation
☐ Final Omitted Regulation

- ☐ Emergency Certification Regulation;
☐ Certification by the Governor
☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This final form rulemaking is to provide standards for the registration of Private Testing and Certification Facilities in the Commonwealth.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Pennsylvania Gaming Control Board has the general authority in 4 Pa.C.S. § 1202(b)(30) and the specific authority in 4 Pa.C.S. §§ 1320(b.1), 13A41(b.1), 13B02, 13C02, and 3302.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The Pennsylvania Race Horse Development and Gaming Act of 2004, as amended, in § § 1320(b.1) and 13A41(b.1) directs the Board to adopt regulations regarding the registration of private testing and certification facilities. Use of these private testing and certification facilities was also referenced §§ 13B02(a)(2) and 3701(e) of the Act. The Board was directed to promulgate regulations one year after the effective date of the section, which was October 30, 2017.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

As directed by the above-referenced sections in the Act, these regulations provide a licensure structure of private testing and certification facilities and provide the standards that make a facility suitable to obtain a registration. These regulations will ensure that games and gaming devices that are being tested by private testing and certification facilities are being thoroughly vetted prior to submission to the Board's Bureau of Gaming Laboratory Operations for abbreviated review. The regulated gaming industry as a whole will benefit from the regulations. Patrons will be provided with games and gaming devices that have been properly evaluated for fairness and regulatory compliance. Manufacturers and gaming-related service providers will have their products made available for use or implementation quicker under the abbreviated approval process.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no corresponding federal standards for any of these provisions in this rulemaking.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This rule making is comparable to the licensing and regulation standards imposed by New York and Massachusetts. In New York and Massachusetts, the comparable licensing and regulatory standards provide a framework for the certification of independent laboratories. These certified independent laboratories are then empowered to offer to interested manufacturers the lab's services to test and render opinion on gaming products. The independent labs are then required to issue a report of their findings to the gaming oversight body of the jurisdiction and that body then determines, based upon the independent lab report, whether to allow the proposed gaming product in their jurisdiction. The regulatory language and framework being offered by the Pennsylvania Gaming Control Board is consistent with rules and procedures of other jurisdictions for independent lab testing of gaming products. Competition with other states is not at issue with this set of regulations.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will not affect any other regulations of the PGCB nor any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

No other persons or groups were involved in the development and drafting of the regulation. Concerns presented in comments from IRRC, FanDuel, and BMM Test Labs were addressed in this final form rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The Board has previously worked with and accepted reports from two private testing and certification facilities, both of whom would likely seek registration. The Board has not made conclusions as to the size classification of these entities, and whether they would be classified as small businesses. The Board is aware of at least three other private testing and certification facilities that have inquired about working with the Board and/or seeking information regarding licensure. It is unknown to the Board at this time whether any of these entities would qualify as small businesses as defined in the United States Small Business Administration’s Small Business Size Regulations, under 13 C.F.R. Ch. 1 Part 121.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Any private testing and certification facility seeking registration with the Board would be required to comply with this regulation. Additionally, any manufacturer or gaming-related gaming service provider would need to follow the updated submission guidelines to be considered under the abbreviated certification and approval process. It is anticipated there are at least 5 private testing and certification facilities that would apply for registration. As of March 24, 2023, there are currently 116 manufacturers (slot machine, table game, iGaming, sports wagering, and VGT) and 4 gaming related gaming service providers who are licensed or have pending renewals or initial applications with the Board.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

It is not anticipated that this rulemaking will have a negative financial or economic impact on the regulated community. Private testing and certification facilities will be required to pay for initial registration and renewal, and manufacturers and gaming related gaming service providers that wish to enlist their testing services will be required to pay any applicable fees. The regulation will provide for all games and gaming devices to be thoroughly vetted by an independent third-party testing facility, and received abbreviated certification and approval when submitted to the Board’s Bureau of Gaming Laboratory Operations.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation will provide for all games and gaming devices to be thoroughly vetted by an independent third-party testing facility, and received abbreviated certification and approval when submitted to the Board's Bureau of Gaming Laboratory Operations. It is not anticipated that there will be any adverse effects associated with the regulation.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Any private testing and certification facility will be required to pay an initial \$500 application fee for the entity and \$60 per principal or other individual requiring submission. The initial registration fee is \$2,500 for a 5 year term, and \$2,500 per 5 year renewal thereafter.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking will have no fiscal impact on local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Board does not expect that the requirements of this rulemaking will have any fiscal impact on the Board or any other Commonwealth agency. Licensing processes will be handled by existing Board staff.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Private testing and certification facilities will be required to file an application for registration and a supplemental form. Rather than create a new form specifically for private testing and certification facilities, the entity must simply file an application to be a registered gaming service provider, and sign a supplemental attestation that it meets the requirements of the regulation.

(22a) Are forms required for implementation of the regulation?

The application for registration and supplement can be found on the Board's website for

submission.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The applications for licensure are voluminous. They can be found at <https://gamingcontrolboard.pa.gov/?p=297>. The applicable applications are the Gaming Service Provider Registration and the Private Testing and Certification Facility Supplement.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

The intent of the regulation is to provide an additional track for the review and implementation of gaming devices. The regulation has no effect on gaming revenues, and should result the regulated community to bringing products to the Pennsylvania market faster, thereby realizing revenues sooner. Second, local governments are not subject to these regulatory provisions and therefore will feel no fiscal impact. The regulation is anticipated to be economically neutral to PGCB; PGCB is not proposing this regulation to generate revenue, nor is this regulation anticipated to affect PGCB's incurred costs or staffing levels. To the extent that effects may be felt by the regulated community, costs for certified lab testing are not being established by this regulation and therefore cannot be purported in answering this question. Additionally, this regulation does not preclude the regulated industry from continuing to use PGCB as the testing laboratory. The regulated industry simply will be able to make a determination as to whether the PGCB testing (as currently established) or certified independent lab testing track (being established by this regulatory framework) is in their best fiscal interest.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A

REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2019-2020	FY -2 2020-2021	FY -1 2021-2022	Current FY 2022-2023
PGCB Overall Budget	\$46,067,000	\$43,357,000	\$46,637,000	\$ 48,189,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

It is unknown whether any of the private testing and certification facilities that would be subject to the regulation or manufacturers and gaming related gaming service providers are small businesses. However, it is not anticipated that the regulation will have any adverse impact on any business.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

Other than the initial application and renewals thereof, it is not anticipated that there will be any significant reporting, recordkeeping or other administrative costs associated with this regulation that a private testing and certification facility does not already perform based upon licensure in other jurisdictions or as a matter of industry best practices.

- (c) A statement of probable effect on impacted small businesses.

As stated above, it is not known whether any of the entities subject to the regulation are small businesses. However, any impact will be limited to the need for registration with the Board, which would not be an adverse impact.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

It is not believed that there is a less intrusive or less costly alternative method available.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions have been added.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory approaches were considered as this rulemaking is based upon a directive in the Act to provide for registration of private testing and certification facilities. This regulation reflects the least burdensome means of maintaining regulatory oversight of this activity.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

It is believed there will be no adverse impact on small businesses. By way of further explanation, the framework proposed would treat any potential applicant for registration as an outside testing lab on an equal footing regardless of the size of their business. Eligibility for registration is based upon demonstration of independent accrediting based upon industry standards (ISO/IEC 17025), and demonstration of technical competence to test the gaming devices contemplated. Compliance reporting is equally applied to all registrants, regardless of business size, so as not to create unfair business advantage, or lesser testing requirements to the detriment of the intent of the Gaming Act and the Board's stated oversight responsibilities.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

There is no data, as defined under section (3) of the Regulatory Review Act (71 P.S. § 745.3), upon which this rulemaking is based.

(29) Include a schedule for review of the regulation including:

- | | |
|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| A. The length of the public comment period: | n/a |
| B. The date or dates on which any public meetings or hearings will be held: | Held January 19, 2022 (proposed rulemaking)
April 26, 2023 (final form rulemaking) |
| C. The expected date of delivery of the final-form regulation: | This submission |
| D. The expected effective date of the final-form regulation: | Upon final publication |
| E. The expected date by which compliance with the final-form regulation will be required: | Upon final publication |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | Ongoing |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

No formal review schedule has been established. Instead, the Board consistently reviews its regulations and proposes amendments as the need arises.